

STATE OF MICHIGAN
COURT OF APPEALS

BAMBI GARZA,

Plaintiff-Appellee,

v

ISRAEL GARZA,

Defendant-Appellant.

UNPUBLISHED

May 24, 2007

No. 268918

Oakland Circuit Court

LC No. 2005-712031-DO

Before: White, P.J., and Saad and Murray, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's factual findings in a divorce action are reviewed for clear error, taking into account the special opportunity of the trial court to assess the witnesses' credibility. *McNamara v Horner (After Remand)*, 255 Mich App 667, 669; 662 NW2d 436 (2003); MCR 2.613(C). "A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with a definite and firm conviction that a mistake has been made." *Id.* "If this Court upholds the trial court's findings of fact, it must then decide whether the dispositional ruling was fair and equitable in light of those facts." *Reed v Reed*, 265 Mich App 131, 150; 693 NW2d 825 (2005). "The trial court's dispositional ruling is discretionary and will be affirmed unless this Court is left with the firm conviction that it was inequitable." *Id.*

Defendant first contends that the trial court erred in finding that he was at fault for the breakdown of the marriage. We disagree. The court's finding is supported by plaintiff's testimony that she was the victim of domestic violence and that she vacated the marital home after an episode of domestic violence, and by evidence that defendant was convicted of domestic violence as a result of that episode. The trial court's finding is not clearly erroneous.

Defendant next contends that the trial court erred with respect to the property settlement because plaintiff received a greater share of the assets. When the court is called upon to divide the marital estate, it must do so in a manner that equitable in light of all the circumstances. Each party need not received a mathematically equal share, but significant departures from equality must be clearly explained. *Byington v Byington*, 224 Mich App 103, 114-115; 568 NW2d 141 (1997); *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994). Considering the circumstances of this case, including that plaintiff brought the majority of the assets to the

marriage and defendant's fault for the breakdown of the marriage, the property settlement is not inequitable.¹

Defendant also asserts error regarding the trial court's denial of his request for attorney fees. Defendant did not present any evidence showing the amount of attorney fees owed, that he required financial assistance to defend the action or incurred additional fees as a result of unreasonable conduct by plaintiff, or that plaintiff had the ability to pay. Therefore, the trial court did not abuse its discretion in denying defendant's request for attorney fees. *Kosch v Kosch*, 233 Mich App 346, 354; 592 NW2d 434 (1999); *Hawkins v Murphy*, 222 Mich App 664, 669; 565 NW2d 674 (1997).

Affirmed.

/s/ Helene N. White
/s/ Henry William Saad
/s/ Christopher M. Murray

¹ We note that the parties had a prenuptial agreement and that the trial court, while acknowledging its existence, failed to enforce the agreement in full accordance with its terms. A court should never disregard a valid prenuptial agreement but should instead enforce its clear and unambiguous terms as written. *Reed, supra* at 144-145. However, inasmuch as neither party takes issue with the trial court's decision to deviate from the terms of the agreement, and that the deviation inured to defendant's benefit, appellate relief is not warranted.